

MEMORANDUM OF LAW

DATE: July 22, 1988

TO: S. A. Elmore, Sergeant, San Diego Police
Department

FROM: City Attorney

SUBJECT: Request for Legal Opinion: Casino Parties,
Municipal Code Sections 33.4101 - 33.4110

By memorandum dated June 15, 1988, you asked whether The City of San Diego should repeal its "casino party" ordinance, San Diego Municipal Code sections 33.4101 through 33.4110, based upon California Attorney General's Opinion No. 87-906. You expressed specific concern that all casino parties may be illegal under Penal Code section 330 and that permitting such casino parties may be a violation of Penal Code section 335.

The California Attorney General's broad treatment of "casino night" events and in-depth analysis of California Penal Code sections 330 (gaming) and 319 (lotteries) does not result in a finding that all casino parties are illegal but does raise questions as to the validity or need to amend portions of the San Diego "casino party" ordinance. The specific provisions of the San Diego Municipal Code in question are section 33.4103 which defines "casino party" and section 33.4107 which lists the City licensing regulations for the operation of a "casino party."

A "casino party" is defined in San Diego Municipal Code section 33.4103(a) as follows:

CASINO PARTY shall mean any event at which the public is permitted or invited to play games of chance as specifically listed in section 330 of the California Penal Code and which are played for no consideration. (Emphasis added.)

There is no violation of section 330 of the California Penal Code unless one of the twelve games proscribed by name or one of the two categories of games denominated "any banking or

percentage game played with cards, dice or any device" are played for money or representative of value. The absence of consideration paid for the chips while essential to a lottery under California Penal Code section 319 is not controlling under the gaming provisions of California Penal Code section 330. There is no violation of section 330 unless the players are playing the game for money or representative of value.

Consideration is not an element under section 330.

As stated on page 144 of the Attorney General's opinion:

. . . whether chips are representative of value within the meaning of section 330 depends on whether the chips may be redeemed for money or something of value and not on what, if anything, was paid for the chips.

The Attorney General then concluded on page 145 as follows:

We conclude that when persons make a wager with chips (whether acquired by gift or purchase) at a game of roulette or twenty-one or any other game prohibited by section 330, when the chips won may be used to (1) acquire raffle tickets to be drawn for valuable merchandise or (2) bid at auction for valuable merchandise, the chips are "representative of value" and section 330 is violated. (Emphasis supplied.)

Section 33.4103(a) of the San Diego Municipal Code can be amended to conform with the Attorney General's opinion by substituting the words "neither money nor other representative of value" for the words "no consideration." Section 33.4103(a), as amended, would provide as follows:

(a) CASINO PARTY shall mean any event at which the public is permitted or invited to play games of chance as are listed in section 330 of the California Penal Code and which are played for neither money nor any other representative of value.

Section 33.4107(h) conflicts with the Attorney General's opinion in that it allows chips or scrip won at any of the games prohibited by section 330 to be exchanged for lottery or drawing tickets for prizes or merchandise. As stated in the Attorney General's opinion, chips or scrip won at any of the games

prohibited by section 330 cannot be exchanged for drawing or lottery tickets.

Section 33.4107(h) can be amended to conform with the Attorney General's opinion by deleting the words "but may be exchanged for drawing tickets" and adding the following: "Chips or scrip won at any of the games prohibited by California Penal Code section 330 may not be exchanged for money or representative of value which includes drawing or lottery tickets for prizes or merchandise." Section 33.4107(h), as amended, would provide as follows:

(h) No chips or scrip may be redeemed for cash. Chips or scrip won at any of the games prohibited by California Penal Code section 330 may not be exchanged for money or representative of value which includes drawing or lottery tickets for prizes or merchandise. All prizes or merchandise must be awarded by means of a raffle or similar lottery, and no single prize shall exceed \$2,500 in fair market value and the total fair market value of prizes awarded at any one casino party shall not exceed \$5,000, and no cash prize shall be awarded.

As chief law officer of the State, the Attorney General has the duty to see that the laws of the State are uniformly and adequately enforced. Cal. Const. art. V, section 13. The Attorney General's opinion on "casino party" events should be followed by the San Diego Police Department in discharging its enforcement responsibilities. Repeal of the ordinance is not required due to the severability provisions of San Diego Municipal Code section 33.4110. Also pertinent to enforcement is section 33.4107(i) which provides as follows: "No organization shall operate a casino party in violation of any law."

Please contact me if you have any further questions regarding this response to your questions.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino
Deputy City Attorney

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